No. 08-1105

IN THE SUPREME COURT OF THE UNITED STATES

John Michael McLeod,

Petitioner,

v.

MICHIGAN DEPARTMENT OF TREASURY

Respondent,

On Writ Of Certiorari to
The Supreme Court of Michigan

PETITION FOR REHEARING

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Knowing that the state of Michigan seized 100% of this Petitioners wages without legal court order while denying Petitioner's repeated requests for a due process hearing prior to seizure:

I. THE QUESTION PRESENTED:

Can the Supreme Court deny hearing a case involving blatant denial of due process by a state without denying the Petitioner due process themselves?

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CONSTITUTION of the UNITED STATES
MICHIGAN CONSTITUTION

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

SUPREMACY CLAUSE – specifies that the Constitution itself, and the federal statutes enacted pursuant to the Constitution, would be the supreme "Law of the land"

The following amendments to the United States Constitution states in pertinent part:

Fourth Amendment: The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated..

Fifth Amendment: No person * * * shall be deprived of life, liberty, or property, without due

process of law...
Fourteenth Amendment: No State shall * * *
deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Revised Judicature Act 236 of 1961 secs 600.6231 & 4035
state:

Sec. 6231 – Garnishment without order prohibited and void; notice of order. The garnishment of any money due or to become due for the personal work and labor of the defendant upon a judgment made payable in installments either by the court order or by agreement of parties is prohibited, excepting upon a written order of the judge. Any writ of garnishment issued without the order is void. The order may be made following due notice to the defendant if installments are due.

Sec. 4035 – An attachement shall bind goods and cattels from the time they were attached.
An attachement of realty or any right or interest therein shall constitute a lien thereon, effective from the time when a certified copy of the attachment including a description of the realty shall be deposited in the office of the register of deeds in the county where the realty is situated.

26 USC Sec 6331 Levy and Distraint state in pertinent part: Notwithstanding * * * such continuous levy shall attach to up to 15 percent of any specified payment due tothe taxpayer.

5 USC sec 706 Scope of review –

> To the extent necessary to decision and when presented, the reviewing court shall decide all relevant questions of law, interpret constitutional and statutory provisions, and determine the meaning or applicability of the terms of an agency action.

Act 122 of 1941 sec 21(b) - If the dispute is not resolved within 30 days....shall give notice to the taxpayer.....The notice shall include the amount of the tax the department believes the taxpayer owes, the reason for that deficiency, *and a statement advising the taxpayer of a right to an informal conference*, the requirement of a written request by the taxpayer for the informal conference that includes the taxpayer's statement of the contested amounts and an explanation of the dispute, and the 30-day time limit for that request.

MCLA Article 6 sec. 6 states – Decisions of the supreme court, including all decisions on prerogative writs, shall be in writing and shall contain a concise statement of the fcts and reasonds for each decision and reasons for each denial of leave to appeal. When a Judge dissents in whole or in part he shall give in writing the reasons for his dissent.

PETITION FOR REHEARING

Pursuant to Rule 44.2, the Petitioner John Michael McLeod respectfully petitions the Supreme Court of the United States for a rehearing of its decision denying John Michael McLeod's Petition for a Writ of Certiorari. This Petiton is not meant to as a delay, but as an ongoing pursuit of Justice.

John Michael McLeod acting Pro Se petitions this Court on the grounds that Marbury vs. Madison, 5 U.S. 137 (1803) as not being overturned mandates the Constitution stands as the law of the land. The Supremacy Clause specifies that the Constitution and Federal statutes enacted pursuant to the Constitution would be the supreme "law of the land". That being the case, any denial of a clear constitutional violation presented to a court would be a denial of due process.

Since Justice Clarence Thomas stated as follows, in a 2004 dissent:

> As an initial matter, it is possible that the Due Process Clause requires only "that our Government must proceed according to the law of the land' – that is, according to written consitutional and statutory provisions." In re Winship, 397 U.S. 358, 382 (1970).

The madate is clear that both federal and state governments cannot deny due process without violating the Constitution.

What is Due Process? I rely on this Honorable United States Supreme Court for that definition:

Due Process - From this U.S. Supreme Court, Procedural Due Process is defined:

> The concept of due process derives from the Magna Carta (1215)..... The Fifth Amendment of the Constitution requires the the federal government not deprive any person of "life, liberty, or property without due process of law." The same language is included in the Fourteenth Amendment as a constraint on the states. The central aim of due process doctrin is to assure fair procedure when government imposes a burden on an individual. The doctrin seeks to prevent arbitrary government, avoid mistaken deprivations.....

Due Process from the US Government Guide:

> The 5th and 14th Amendments to the U.S. Constitution guarantee individuals the right of due process of law, which is often referrred to simply as "due process." The 5th Amendment states, "No person shall be....deprived of life, liberty, of property, without due process of law." The 14th Amendment states, "No state shall...deprive any person of ....property, without due process of law." These two due process clauses provide that the government must act fairly, according to established legal procedures, with regard to a person's rights to life, liberty, and property.

> Procedural due process – the idea that the government must follow fair and generally acepted legal procedures in its actions agains individuals.

Clearly from this Courts own definition, due process is guaranteed as a protection against illegeal siezure of property. In the case at hand the evidence is clear that the state of Michigan has acted in violation of the Federal and Michigan Constitutions and garnishment laws. This Petitioner pleaded repeatedly for his right to a due process hearing (Act 122 0f 1941 sec 21b)(Appendix) only to be ignored with the ultimate seizure of 100% of his wages in excess of garnishment limits without a legal court order.

The U.S. Constitution's separation of the legislative, executive, and judicial branches of government, the checks and balances of each branch against the other, and the explicit guarantees of individual liberty were all designed to strike a balance between authority and liberty. This guarantee was broken in the Michigan Court of Claims when this Petitioner's Motion for Default Judgment was denied (Respondent filed late) along with denying any appeals that followed. Since the State did not follow procedures set out in law (Bushmann v. Schweiker, 676 F.2d 352 (1982)), and since the Petitioner notified the state of the proper procedures prior to seizure of property requesting numerous times for a due process hearing, the State acted with full awareness in their actions. The

Petitioner only asks for his Constitutional right to be heard and resolve the issues presented with the return of all seized property (Ruff v. Issac, Michigan Court of Appeals,
(case no. 192615) Oct 17, 1997).

I pray that all of the Justices will review the above quote by Justice Clarence Thomas along with this Court's guarantee of due process, the evidence at hand, and rule on this case accordingly in good conscience. This uneducated in law Pro Se Petitioner pleads that both Federal and State Constitutions and statutes have been ignored by the Michigan Courts in the Petitioner's attempt to gain the return of property which was taken illegally from the Petitioner.

The Petitioner makes no request that this court has not already guaranteed regarding the rights to due process. You, the Justices of this United States Supreme Court have declared that denial of due process is unjust. The Constitution in fact guarantees the right to due process. All the Petitioner asks is that all of the Justices review thouroughly the claims made by this Petitioner and reconsider the denial of Writ of Certiorari. As our Constitution and Declaration of Independence are founded on Godly principals (In God We Trust is on our coins), I pray to God that Justice is served in this case.

CONCLUSION

For the above reasons, this Petitioner respectfully requests that this Court grant his Petition for Rehearing and grant a Writ of Certiorari forcing the Michigan Supreme Court to hear the Petitioner's case in full along with explaining why the original case was dismissed without an opinion as required
by law (MCLA Article 6 sec. 6).

Respectfully submitted.

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APPENDIX

Constructive Notice of Demand and Fault/Default

Filed in Jackson County Register of Deeds 16-Jun-07

This notice was included in the Michigan Supreme Court documents and lists all the certified mailing attempts to correspond with Michigan Department of Treasury agents in an attempt to resolve the issue. Listed in items 6, 9, 16, 18, 20, 21 and 26 are repeated attempts of requesting a due process hearing which is guaranteed by law in Act 1220 1941 sec 21b and which were ignored by the state.

Listed in item 27: John Michael Mcleod responded via notarized and certified mail #7004 2510 0007 1469 9010 dated 22-Sept-06 to an aknowledgement of Request for Informal Conference dated 12-Sept-06 and WARRANT-NOTICE OF LEVY dated 21-Aug-06 from State agent Mary G. MacDowell. Included in certified mail were legal arguments stating fraud by the state as the NOTICE OF LEVY was not a legal levy. Mary G. MacDowell was requested to respond to 1.) all legal arguments, 2.) each and every point of enclosed statement of facts, and 3.) to sign and return enclosed affidavit of authourity. John Michael McLeod states for the record that no response was ever received from Mary G. MacDowell.
The above action was a legal default by Mary G. MacDowell.